

Message Text

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SUBJ: EDGAR L. ROJAS; TRAVEL OF CHILD OF DIVORCED EMPLOYEE

REF: STATE 209379 AND LA PAZ OM DATED 8/12/76

1. REFTEL INDICATES TRAVEL OF MR. ROJAS' DAUGHTER WILL BE DEPENDENT ON DIVORCE DECREE ISSUED SOME YEARS PREVIOUS OR ON AMEMDED DECREE. MR. ROJAS HAS NOT BEEN ABLE TO FOLLOW THROUGH WMH AMENDMENT TO ORIGINAL DECREE GRANTING CUSTODY TO MOTHER DURING HIS TENURE IN LA PAZ. HOWEVER, IT WOULD SEEM THAT SOME WEIGHT SHOULD BE GIVEN TO THE NOTARIZED STATEMENT OF HIS FORMER WIFE WHICH ATTACHED TO REFERENCED EMBASSY OM.

2. MOTHER STATES KIMBERLY L. ROJAS WILL BE IN "CUSTODY OF HER FATHER" DURING MARCH THROUGH DECEMBER, 1976. WE WONDER IF THIS NOTARIZED STATEMENT COULD NOT IN ITSELF BE CONSIDERED A VOLUNTARY RELINQUISHMENT OF THE CUSTODY WHICH WAS AWARDED THE MOTHER AT THE TIME OF THE DIVORCE FOR THIS PERIOD. IT APPEARS TO US THAT THE DIVORCED PARENT IS UNFAIRLY PENALIZED IN CASES WHERE THE PARENT AWARDED CUSTODY IS WILLING TO VOLUNTARILY GIVE CUSTODY TO THE OTHER PARENT BECAUSE THE PARENT OVERSEAS HAS BEEN UNABLE TO FOLLOW THROUGH WITH COURT AMMON. WE REALIZE, OF COURSE, THAT THE MATTER IS AN EXTREMELY STICKY ONE, FRAUGHT WITH A MULTITUDE OF LEGAL DIFFICULTIES; YET WE HOPE THAT THERE IS SUFFICIENT LEEWAY FOR THE DEPARTMENT TO CONSIDER ASPECTS OF SUCH CASES WHICH MAY NOT FALL STRICTLY WITHIN THE FRAMEWORK OF THE COMPTROLLER GENERAL'S OPINION, BUT WHICH, BECAUSE OF AMICABLE AGREEMENTS BETWEEN THE PARENTS, WOULD RESULT IN A FAVORABLE JUDGMENT WERE BOTH
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PARENTS IN POSITION TO PURSUE THEM IN COURT.

3. WE UNDERSTAND THE DEPARTMENT'S DILEMMA IN MR. ROJAS' CASE. HOWEVER, BASED ON THE SWORN STATEMENT OF MR. ROJAS' FORMER WIFE THAT SHE HAS RELEASED CUSTODY OF KIMBERLY TO HER FATHER AND BECAUSE THE TIME STATED SEEMS TO FIT WITHIN THE PURVIEW OF 75 STATE 12126; IE, THAT "THE DEPENDENT'S PRIMARY PLACE OF IMDY ABODE BE WITH THE EMPLOYEE, WHEREVER THAT MAY BE, THAT THE EMPLOYEE HAVE LEGAL CARE OR CUSTODY OF THE DEPENDENT FOR THE GREATER PART OF A YEAR." MR. ROJAS' DAUGHTER ARRIVED AT POST IN APRIL AND WILL REMAIN HERE AT A MINIMUM THROUGH DECEMBER WITH THE STRONG POSSIBILITY THAT SHE WILL REMAIN WITH HIM THROUGH APRIL, 1977, WHEN DE DEPARTS LA PAZ ON TRANSFER. SHE WOULD THUS HAVE RESIDED WITH HIM FOR AT LEAST THREE QUARTERS OF THE YEAR AND VERY POSSIBLY FOR AN ENTIRE YEAR.

4. WE COULD CERTAINLY NOT ARGUE THAT MR. ROJAS HAD CUSTODY OF KIMBERLY WERE SHE TO HAVE RESIDED IN LA PAZ SIMPLY FOR A SUMMER VACATION OR OTHER SUCH SHORT PERIOD, BUT IT SEEMS PATENTLY UNFAIR TO US, UNDER CIRCUMSTANCES WHEN SHE WILL RESIDE WITH HER FATHER FOR UP TO A YEAR WITH A FORMAL STATEMENT FROM THE MOTHER RELINQUISHING CUSTODY DURING THIS PERIOD, NOT TO BE ABLE TO PROVIDE MR.ROJAS WITH THE SAME BENEFITS OTHER FOREIGN SERVICE PERSONNEL ENJOY. WE THEREFORE REQUEST THAT THE DEPARTMENT RECONSIDER ON THIS BASIS.
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